



# **GUIDELINES FOR CONSERVATORS**

**The Probate Courts of Connecticut  
Probate Court Administrator  
186 Newington Road  
West Hartford, CT 06110**

*Compliments of your local probate court:*

## **INTRODUCTION**

The Probate Courts of Connecticut become involved in the lives of individuals who are incapable of caring for themselves and/or their property. The Courts are entrusted with the responsibility of protecting the interests of these individuals. This trust is carried out by the appointment of a conservator, who is authorized by law to provide supervision and who is, in many respects, an agent of the Court.

This booklet has been prepared to answer some of the questions you may have regarding the procedures, roles, and responsibilities of the Probate Court and the conservator whom the court appoints. It should be considered only as a guide in connection with the conservatorship process and not as a substitute for competent professional advice.

### Notes:

- 1) As used in this booklet, words referring to the masculine gender may be applied to females, and words referring to the feminine gender may be applied to males.
- 2) Applications for conservatorship are available at the probate court or online at the Judicial Branch's web site: [www.jud.state.ct.us](http://www.jud.state.ct.us). (Click on "Court Forms" under "Quick Links.")

## **WHAT IS A CONSERVATOR?**

A conservator is a person appointed by the Probate Court to oversee the financial and/or personal affairs of an adult person who is determined by the Probate Court to be incapable of managing his or her affairs or unable to care for himself or herself. A conservator may also be appointed for the same purpose for a capable person who requests such assistance.

There are two basic types of conservatorships to accommodate the different needs of individuals. A "conservator of the person" is appointed to supervise an individual's personal affairs, including arranging for medical needs and seeing to it that he has proper and adequate food, clothing, personal hygiene, and housing and is protected from physical abuse. A "conservator of the estate" is appointed to supervise the financial affairs of an individual who is found by the Court to be incapable of doing so himself to the extent that property will be wasted unless management is provided.

A person may be in need of one or both types of conservators. Two separate individuals may perform these two roles, or one person may serve in both capacities. A conservator of the estate or person may be an individual, a legally authorized municipal or state official, or a private or nonprofit corporation. However, hospitals and nursing homes cannot be appointed conservators of either the person or the estate, and banks cannot be appointed conservators of the person.

A mentally retarded adult may be in need of a conservator of the estate to manage his financial affairs, while a guardian of the mentally retarded person is appropriate to oversee his or her personal affairs.

## **MAY A PERSON NAME A CONSERVATOR IN ADVANCE OF INCAPACITY?**

Yes. Prior to becoming incapable, a person may name a future conservator by executing a document with the same formality and requirements necessary for executing a will.

## **WHAT IS TEMPORARY CONSERVATORSHIP?**

The laws of Connecticut provide for the possibility that an individual may be in need of a conservator on a temporary basis. Any person deemed by the Court to have sufficient interest in the welfare of the alleged incapable person (referred to as "the respondent") may petition for appointment of a temporary conservator. The necessary forms may be obtained from the probate court. In addition to the application, the Court is required to receive a physician's report on the respondent's condition. This report may be waived in certain circumstances, however.

The Court will hold a hearing on the application following the appointment of an attorney and notice to the respondent, the respondent's next of kin, and the respondent's attorney. The hearing must be held within 72 hours of the filing of the application (excluding Saturdays, Sundays, and holidays), unless it is continued by the Court.

In order to appoint a temporary conservator, the Court must find that the respondent is incapable of managing his affairs or of caring for himself *and that* immediate and irreparable personal, financial, or legal damage will result if a temporary conservator is not appointed. In making the appointment, the Court must limit the temporary conservator's duties, responsibilities, and powers to the conditions that gave rise to the application. The judge must consider the respondent's wishes, his abilities, any prior appointment of a health

care agent or other person legally acting on his behalf, available support services, and any other relevant evidence.

A temporary conservator may be appointed on an emergency basis if the judge determines that the delay caused by giving notice and appointing an attorney would cause immediate and irreparable injury to the respondent's mental or physical health or financial and legal affairs. In the decree, the judge must specifically state why the emergency appointment was necessary. Immediately following the emergency appointment, the Court must schedule a hearing to be held within 72 hours (excluding Saturdays, Sundays, and holidays), appoint an attorney for the respondent (who is referred to as "the ward" after the conservator is appointed), and give formal notice of the hearing to the ward, the ward's next of kin, and the ward's attorney. At the hearing, the Court shall confirm or revoke the temporary conservatorship, or the judge may modify the duties, responsibilities, or powers assigned under the emergency appointment.

Temporary conservatorship may last no longer than 30 days, unless an application for involuntary conservatorship is filed while the temporary conservatorship is in effect. If such an application is filed, the Court may extend the appointment of the temporary conservator until disposition of the application for involuntary conservatorship or for an additional 30 days, whichever occurs first. The Court may also terminate the appointment of a temporary conservator if the conditions that led to the application for temporary conservatorship no longer exist. Upon termination of the temporary conservatorship, the temporary conservator must file a Conservator's Report, PC-371.

### *Change of Residence*

A temporary conservator may not change the ward's residence without a hearing and approval by the Court, except under certain circumstances, as explained below.

### *Placement in an Institution for Long-Term Care/Reporting Requirements*

If the temporary conservator determines that the ward needs to be placed in an institution for long-term care\*, he must first file a report (PC-371A) with the probate court that made the appointment. However, if the placement will be made because of the ward's discharge from a hospital or if irreparable injury to the ward's mental or physical health or financial or legal affairs would result from filing the report before making the placement, the temporary conservator must make the placement before filing the report. Under these circumstances, the temporary conservator must file the report within five days of making the placement, and he must include a statement in the report about the hospital discharge or a description of the "irreparable injury" that the placement averted.

The report must state the basis for the conservator's decision about the placement, the community resources that were considered to avoid the placement, and the reasons why the ward's physical, mental, and psychosocial needs cannot be met in a less restrictive and more integrated setting. Community resources to be considered include area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, independent living centers, residential care homes, and congregate or subsidized housing. The temporary conservator must give notice of the placement and a copy of the report to the ward and any other interested parties as determined by the Court.

*\*An "institution for long-term care" is defined as a facility that has been "federally certified as a skilled nursing facility or intermediate care facility."*

## *Hearing on the Report and Placement*

The Court is required to hold a hearing on the report and placement upon the request of the ward or an interested party. The hearing must be held within 30 days of the request. The Court also has the authority to hold a hearing on its own motion. If a hearing is held and the Court determines that the ward's physical, mental, and psychosocial needs can be met in a less restrictive and more integrated setting within the limits of his financial resources or through private or public assistance, the Court must order that the ward be placed in that type of setting.

## **WHAT IS VOLUNTARY REPRESENTATION (CONSERVATORSHIP)?**

The supervisory relationship of the Court over the appointed conservator has given rise to another type of conservatorship. This is termed "voluntary representation" or voluntary conservatorship and is used when a person who is not legally incapable would like another person to manage her affairs, subject to oversight by the Court. In most cases, voluntary representation results in appointment of a conservator of the estate, but it could also involve appointment of a conservator of the person.

Prior to appointing a conservator in voluntary proceedings, the Probate Court in the district in which the individual resides or is domiciled will hold a hearing on the Application for Voluntary Representation. The person requesting the voluntary conservatorship must be present at the hearing, or, if attendance at the hearing is not possible, the judge must visit him. After hearing the reasons for the individual's request for a conservator, the Court may grant voluntary representation for the individual without making a finding of incapacity. A conservator, usually of the respondent's choice, is then appointed. Since this relationship is voluntary, the ward

may terminate the conservatorship with 30 days' notice to the Court. A conservator appointed under the voluntary process has the same powers and duties as a conservator appointed in involuntary proceedings. Appointment of a conservator of the estate in voluntary proceedings has the effect of nullifying any power of attorney previously granted by the ward.

## **HOW IS A CONSERVATOR APPOINTED IN INVOLUNTARY PROCEEDINGS?**

"Involuntary representation" usually involves a long-term appointment. Any person alleging that a person is incapable of caring for himself or herself may file an Application for Appointment of Conservator in the probate court in the district in which the alleged incapable person (the "respondent") resides or is domiciled. There is a criminal penalty for filing a fraudulent or malicious application or for testifying fraudulently as to a person's incapacity, temporary or otherwise.

The Probate Court will hold a hearing within 30 days of receipt of the application. The hearing may be continued to a later date if good cause is shown for postponing the hearing. Unless the Court finds that personal service would be detrimental to the respondent's health or welfare, a state marshal will make personal service of the notice of hearing on the respondent. The respondent's spouse will also receive personal service, if he or she is not the applicant, except as provided by statute (C.G.S. §45a-649). If the respondent is unable to request or obtain an attorney, the Court will appoint one. Compensation for the attorney's services will be paid by the Probate Court Administration Fund if the respondent cannot afford to pay for counsel. The respondent has a right to be present at the hearing, and it may be held at a place other than the probate court if that would facilitate his attendance. If this is not practical and the respondent is in Connecticut, the judge may

visit the respondent before the hearing.

At the court hearing for involuntary representation, the petitioner is required to present medical evidence about the respondent's incapacity from one or more physicians who have examined the respondent within 30 days of the hearing. In certain circumstances, the Court may waive the requirement of medical evidence, but the judge must state the reason for doing so. The Court may also consider other relevant evidence, such as the physical and social functioning level or ability of the respondent and the availability of support services from the family and other appropriate sources. In addition to the medical evidence provided by the petitioner, the Court may, if it finds it necessary, order the examination of the respondent by another physician, a psychiatrist, or a psychologist. The fees for such an examination will be assessed against the petitioner, the respondent, or the party requesting the exam. If the party is unable to pay for the examination, payment will be made by the Probate Court Administration Fund.

If the Court finds by clear and convincing evidence that the respondent is incapable of managing his financial affairs, the Court shall appoint a conservator of the *estate*, UNLESS it appears to the Court that the respondent's financial affairs are being managed properly without the appointment of a conservator. Likewise, if the Court finds by clear and convincing evidence that the respondent is incapable of caring for himself, the Court shall appoint a conservator of the *person*, UNLESS it appears to the Court that the respondent is being cared for properly without the appointment of a conservator.

When determining whether a conservator should be appointed and in selecting a conservator, the Court must be guided by the best interests of the respondent. In making this determination, the Court must consider whether the respondent had made alternate arrangements for the management of his affairs or for the care of his person, such as the execution of a valid durable power of attorney, the appointment of a health care agent, or other similar document.

Appointment of a conservator of the estate in involuntary proceedings has the effect of nullifying any power of attorney previously granted by the respondent (who is referred to as the "ward" after a conservator is appointed) and any voluntary conservatorship previously established.

#### *Placement in an Institution for Long-Term Care/Reporting Requirements*

If the conservator determines that the ward needs to be placed in an institution for long-term care\*, he must first file a report with the probate court that made the appointment. However, if the placement will be made because of the ward's discharge from a hospital or if irreparable injury to the ward's mental or physical health or financial or legal affairs would result from filing the report before making the placement, the conservator must make the placement before filing the report. Under these circumstances, the conservator must file the report within five days of making the placement, and he must include a statement in the report about the hospital discharge or a description of the "irreparable injury" that the placement averted.

The report must state the basis for the conservator's decision about the placement, the community resources that were considered to avoid the placement, and the reasons why the ward's physical, mental, and psychosocial needs cannot be met in a less restrictive and more integrated setting. Community resources to be considered include area agencies on aging, the Department of Social Services, the Office of Protection and Advocacy for Persons with Disabilities, the Department of Mental Health and Addiction Services, the Department of Mental Retardation, independent living centers, residential care homes, and congregate or subsidized housing. The conservator must give notice of the placement and a copy of the report to the ward

and any other interested parties as determined by the Court.

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### *Hearing on the Report and Placement*

The Court is required to hold a hearing on the report and placement upon the request of the ward or an interested party. The hearing must be held within 30 days of the request. The Court also has the authority to hold a hearing on its own motion. If a hearing is held and the Court determines that the ward's physical, mental, and psychosocial needs can be met in a less restrictive and more integrated setting within the limits of his financial resources or through private or public assistance, the Court must order that the ward be placed in that type of setting.

### **MAY THE PROBATE COURT'S DECISION BE APPEALED?**

Any party involved in the conservatorship proceeding who is aggrieved by the Court's decision may appeal to the superior court within 30 days of the issuance of the decree.

### **WHAT ARE THE COSTS ASSOCIATED WITH APPOINTING A CONSERVATOR ?**

A court entry fee of \$150.00 will be charged to the person applying to the probate court for voluntary, involuntary, or temporary conservatorship. The respondent must also pay for an attorney to represent her at the hearing. If the respondent is unable to pay for the services of an attorney, the cost of such services will be paid from the Probate Court Administration Fund. If a conservator is **not** appointed, the petitioner will also be required to pay the charges for the services listed below. If a conservator **is** appointed, the ward's assets will be used to pay for these charges, which are as follows:

1. the cost of personal service (involuntary proceedings)
2. the recording of any documents
3. notices in excess of two with respect to any hearing or continued hearing
4. certified or registered mailing of notices
5. making and certifying copies of documents

If it would cause undue delay or hardship on the petitioner's part, the Court may postpone, reduce, or waive payment of the entry fee and other charges incurred in connection with the conservatorship. If the Court finds that the petitioner is indigent, all fees and costs will be waived.

### **WHO MAY BE APPOINTED CONSERVATOR?**

Although it is the petitioner's responsibility to suggest an appropriate person, the Court determines whom to appoint as conservator by considering the best interests of the respondent. The conservator will often be a relative or friend of the respondent who is willing and able to carry out the duties of a conservator. The Court will honor the respondent's preference in the matter, unless it determines that the choice is not in the respondent's best interests.

The Commissioner of Social Services may be appointed conservator of the estate and/or conservator of the person if no suitable conservator can be found, and the respondent meets certain guidelines. He must be 60 years of age or older, and his liquid assets, excluding burial insurance in an amount up to \$1,500.00, cannot exceed \$1,500.00 at the time of the Commissioner's appointment as conservator.

## **VISITATION**

Any parent of a mentally disabled or mentally retarded adult person for whom a conservator of the person or a guardian has been appointed may file a motion for visitation with the Probate Court that has jurisdiction over the conservatorship or guardianship. After notice and hearing, the Court may grant an order of visitation pursuant to the provisions of C.G.S. §45a-598. The order must contain a schedule specifying the date(s), time(s) and place(s) of visits (including overnight visits, if permitted) and any other conditions that the judge believes to be in the best interest of the ward.

## **WHAT ARE THE DUTIES OF THE CONSERVATOR OF THE ESTATE?**

The duties of the conservator of the estate involve management of the assets of the ward in order that the ward's rights and interests will be protected. The first duty of the conservator is to complete an inventory of the ward's property and assets. In preparing the inventory, the conservator must obtain an appraisal of the fair market value as of the date of appointment as conservator, of all property, both real and personal, in which the ward has a legal interest. Jointly owned property, such as a bank account, must also be appraised and its value stated on the inventory. The conservator must file the inventory in the probate court within two months of appointment.

The conservator must transfer any bank accounts in the ward's name to the name of the estate (i.e. Estate of Samuel E. Jones; John Doe, Conservator) and notify the bank of the appointment as conservator. If there are other assets in the ward's name, such as stocks and bonds, the financial institutions and/or corporations involved should be notified of the conservator's appointment and requested to direct income payments to the conservator of the estate. The conservator should obtain a Fiduciary's Probate Certificate from the Court for this purpose. In addition, the conservator is required to notify and make a return of personal property to the town assessor in any town where the ward owns taxable personal property. The conservator must also file a Certificate of Notice for Land Records in any town where the ward owns real estate. This certificate is also available from the Probate Court.

The ongoing responsibility of the conservator is to use the assets of the ward's estate to support the ward and any members of the ward's family whom the ward is legally liable to support. A hearing may be required to determine the amount of support. When an application for spousal support is filed, the person filing the application must certify to the Court that a copy of the application and accompanying attachments have been sent to the Commissioner of Social Services. The Court will provide notice to the Commissioner at least fifteen business days before the hearing, and the Commissioner (or his designee) has the right to appear at the hearing to present the Commissioner's position on the application. The conservator is responsible for paying



the ward's bills and taxes and collecting debts owed to the ward.

The conservator must consult the Probate Court prior to the sale or mortgage of assets and before making any expenditures other than routine payments.

The law regulates the investments that the conservator is permitted to make on behalf of the ward. Investments received by the conservator at the time of appointment may be retained unless otherwise ordered by the Probate Court or unless retention is clearly imprudent. Questions regarding permissible investments should be directed to legal counsel and the Probate Court. A recently issued Certificate of Appointment is usually required in order to negotiate the transfer of any asset belonging to the ward. When negotiating the assets of the ward, the conservator signs his or her name as conservator of the estate of the ward. Under certain circumstances, conservators may be permitted to make gifts on behalf of the ward from estate funds, but the conservator must receive prior authorization from the Probate Court.

The conservator of the estate may be required by the Court to file a Periodic Account annually in the probate court. Although there are exceptions, the statute generally requires an accounting at least once in every three-year period and more often if the Court directs. The Court will notify interested parties and hold a hearing on the account. The Court will charge a fee based upon the size of the conservatorship estate.

### **WHAT ARE THE DUTIES OF THE CONSERVATOR OF THE PERSON?**

The duties of the conservator of the person as specified by law include the responsibility for the general custody of the ward; providing for the ward's care, comfort, and maintenance; and caring for the ward's personal effects. The conservator also has authority to establish the ward's residence within the state, to apply for entitlement programs for which the ward may be eligible, and to file an application in the probate court to determine a ward's competency to vote in a primary, referendum, or election. In addition, a conservator may consent to the performance of medical treatment and procedures on the ward. When the medical procedure recommended is extraordinary, the conservator may wish to obtain authority from the Probate Court before making such a decision on behalf of the ward. All of these duties must be carried out within the limitations of the resources available to the ward, either through the ward's own estate or through private or public assistance.

In addition to his or her responsibilities relating to the care of the ward, the conservator of the person must report at least annually on the ward's condition by filing a Conservator's Report with the probate court.

### **ARE THERE ANY LIMITATIONS ON A CONSERVATOR'S AUTHORITY?**

When issuing the decree appointing a conservator, the Court may limit the powers and duties of a conservator of the person or a conservator of the estate to include some, but not all, of the powers and duties explained above. In the decree, the judge must make specific findings to justify any limitations, and they must be made in the best interests of the ward. In determining whether or not any limitations should be imposed, the Court will consider the abilities of the ward; the prior appointment of any attorney-in-fact, health care agent, trustee or other fiduciary acting on behalf of the ward; any support services that are otherwise available to the ward; and any other relevant evidence. The Court may modify its decree upon any change in circumstances.

### **HOW IS A CONSERVATORSHIP TERMINATED?**

Conservatorships are most commonly terminated due to the death of the ward or depletion of the estate's assets. If the estate's assets at the time of the ward's death are not sufficient to pay the debts incurred during the ward's lifetime, the funeral and burial expenses, and any probate or other administration expenses necessary to settlement of the estate, the conservator of the estate may pay these expenses and list them for credit on the conservator's Final Account. In other cases, the assets of the estate must be delivered to the executor or administrator of the ward's estate upon the ward's death.

Following notice and a hearing, the Probate Court may also terminate a conservatorship of the estate if it finds that the ward's assets do not exceed the asset limits allowed for the state supplement program. Currently, these asset limits are \$1,600.00 for an individual and \$2,400.00 for a married couple. In the event that the conservatorship is terminated, the conservator of the estate must distribute the ward's remaining assets to the conservator of the person or, if there is none, to another suitable person.

A conservatorship may also be terminated when an interested person feels that the ward has been restored to capacity and makes a request in writing to the Court to review the need for the conservatorship. The Court will set a time and place for a hearing and will issue notice to appropriate individuals. If the Court determines at the hearing that the ward is no longer in need of a conservator, the conservatorship will be terminated.

A ward may also ask the Court to review the conservatorship. The ward and his attorney will be notified annually of the ward's right to a hearing, and, if requested, a hearing will be held.

At least every three years, the Court must review each conservatorship to determine the appropriateness of continuing, modifying, or terminating the conservatorship. Within 45 days of a request from the Court, the conservator, attorney for the ward, and a physician licensed to practice medicine in this state must each submit a written report to the Court on the condition of the ward. The physician must examine the ward within the 45-day period preceding the date of the submission of the report.

If the Court determines that there has been no change in the status of the ward after a review of the three written reports, a hearing need not be held. However, the Court, in its discretion, may hold a hearing on the status of the ward. In addition, the Court must hold a hearing within 30 days if the ward's attorney, conservator, or physician requests a hearing. If the ward is unable to request or obtain an attorney, the Court will appoint one. Compensation for the attorney's services will be paid by the Probate Court Administration Fund if the ward cannot afford to pay for counsel.

After a conservatorship of the estate has been terminated, the conservator should file a final account in the probate court within two months of the termination. The Court will hold a hearing on the account, following notice to the ward and the ward's attorney.

## **IS A CONSERVATOR ELIGIBLE TO RECEIVE COMPENSATION FOR HIS OR HER SERVICES?**

A conservator of either the person or estate is allowed to charge the estate a fee for the services rendered to the ward. The fee must be found to be reasonable by the Probate Court and is limited by statute in certain cases.

## **WHAT IS A PROBATE BOND AND WHEN IS IT REQUIRED FOR A CONSERVATOR?**

A probate bond is a form of surety purchased by a conservator to guarantee protection of the ward's assets. A conservator of the estate is required to purchase a bond usually equal in value to the liquid assets of the ward's estate. (Please note the following exception to this bonding requirement. If the ward's assets are less than \$20,000, or if the amount of the ward's estate not restricted by Probate Court order is less than \$10,000, the judge may waive the bond.) The Court may accept a lower bond if a conservator is willing to accept a restriction on the control of assets. If the estate's assets change in value, or if the estate is a small one and the spouse or next of kin is the conservator, the value of the bond may be increased or decreased accordingly. A conservator of the person may also be required to purchase a probate bond. In all cases, the Probate Court sets the amount of the bond required in accordance with rules adopted by the Connecticut Supreme Court.

## **CONCLUSION**

The relationship between conservator and ward is one characterized by trust. Essential elements in the relationship are confidence on one side and active good faith on the other. The law looks on a conservator as a trustee, and, as such, the conservator cannot neglect the ward's interests. As a general rule, any profit or advantage that arises from the conservator's management of the ward's estate accrues to the ward, not to the conservator.

The seriousness of the conservator's responsibility for the ward's person and/or property cannot be overstated. For this reason, the conservator should always consult with the Probate Court or legal counsel when making decisions that may have serious consequences for the ward.

## RECORD OF IMPORTANT DATES

### Dates

Appointment as Conservator	.....
Inventory Due (two months from date of appointment)	.....
Periodic Account Due (at least once in every three year period; more often if ordered by the Court)	.....
Conservator's Report, PC-371 (Due annually)	.....
Conservator's Report/Placement or Request for Hearing on Placement, PC-371A	.....
Mandatory Review by Probate Court (At least every three years)	.....
Termination of Conservatorship	.....
Final Account Due (No later than two months from date of termination of conservatorship)	.....

## RECORD OF HEARING

.....	.....
.....	.....